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FILED

08 MAY -2 PM 12:44

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

BY:

6 Attorneys for Defendant  
7 MORGAN SERVICES, INC., a Delaware  
8 corporation (erroneously named as an Illinois  
corporation)

9  
10 UNITED STATES DISTRICT COURT  
11  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 WILLIAM SWIMAN, individually and on  
14 behalf of all other persons similarly  
15 situated and on behalf of the general public,

Plaintiff,

v.

16 MORGAN SERVICES, INC., an Illinois  
17 corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. '08 CV 0806 WQH NLS  
Judge:

NOTICE OF REMOVAL OF ACTION TO  
FEDERAL COURT PURSUANT TO 28  
U.S.C. § 1441 (FEDERAL QUESTION AND  
DIVERSITY JURISDICTION)

Complaint Filed: March 20, 2008

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NOTICE OF REMOVAL OF ACTION TO FEDERAL  
COURT PURSUANT TO 28 U.S.C. § 1441  
Case No.:

## **NOTICE OF REMOVAL**

**TO THE CLERK OF THE COURT:**

PLEASE TAKE NOTICE that Defendant Morgan Services, Inc. ("Morgan Services") hereby removes to this Court the State Court action described below based on federal question and diversity of citizenship jurisdiction.

## **BACKGROUND**

1. On or about March 20, 2008, an action was commenced in the Superior Court of the State of California for the County of San Diego, entitled *William Swiman, individually and on behalf of all other persons similarly situated and on behalf of the general public v. Morgan Services, Inc., an Illinois corporation; and Does 1 through 100, inclusive*, Case No. 37-2008-00080260-CU-OE-CTL (the “Action”). True and correct copies of all pleadings, process, and orders served or filed in the Action are attached to the Notice of Lodgment (“NOL”) filed herewith; Exhibit “A” to NOL is a copy of the Complaint.

2. On April 2, 2008, Morgan Services acknowledged and accepted service of process of the Summons and Complaint in the Action. (Exhibit "E" to NOL.)

3. The Action asserts claims on behalf of named Plaintiff William Swiman and a putative class of current and former California employees of Morgan Services. As alleged in the Complaint, the class action seeks:

“unpaid overtime and double-time compensation and interest thereon; compensation for missed meal and rest periods, compensation for failure to furnish accurate wage statements, waiting time penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs...and injunctive relief and restitution on behalf of all benefits Defendants have enjoyed from their failure to pay overtime and double-time compensation, [and] their failure to provide adequate meal and rest breaks, under Business and Professions Code §§ 17200 et seq.”

(Complaint ¶ 1.)

## **THE COURT HAS FEDERAL QUESTION JURISDICTION**

26       4. This Court has original jurisdiction over the Action under 28 U.S.C. section 1331  
27 and the Action is one which may be removed to this Court by Defendant pursuant to the  
28 provisions of 28 U.S.C. section 1441, in that it is a civil action arising under a federal statute, 49

1 U.S.C. section 504, and the implementing regulations, 49 C.F.R. section 395.1 et seq. The  
 2 Complaint alleges that Plaintiff's wages and hours are regulated by the California Industrial  
 3 Welfare Commission Wage Order No. 6-2001, including the employees' status as "non-exempt"  
 4 employees, their days and hours of work and meal and rest breaks. (Complaint ¶ 2.) From this  
 5 statement it is clear that one of the elements of Plaintiff's claims is that the drivers were in fact  
 6 regulated by Wage Order No. 6-2001.

7       5. However, Wage Order No. 6-2001, Section 3 (J), specifically provides that the  
 8 "Hours and Days of Work" provisions of Wage Order No. 6-2001, "are not applicable to  
 9 employees whose hours of service are regulated by: (1) the United States Department of  
 10 Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service  
 11 Drivers."

12       6. To establish his claims, Plaintiff must prove that the Wage Order is applicable. In  
 13 particular, to prove his first cause of action for failure to pay overtime and double-time Plaintiff  
 14 must prove he, as a Morgan Services driver (a "Service Representative", see Declaration of Glenn  
 15 Teixeira in Support of Motion filed herewith ("Teixeira Decl.") ¶ 4), is not regulated by the  
 16 Department of Transportation, Code of Federal Regulations, Title 49, Sections 395.1 to 395.13,  
 17 *Hours of Service Drivers.*

18       7. Plaintiff's first cause of action requires a determination of whether Wage Order  
 19 No. 6-2001 is applicable and therefore it is a prerequisite to that determination to determine  
 20 whether the drivers are regulated by 49 C.F.R. sections 395.1 et seq. (authorized by 49 U.S.C.  
 21 section 504), which requires resolution of a significant question of federal law, i.e. whether  
 22 Plaintiff Swiman worked in interstate commerce, and meets the criteria specified in the  
 23 regulations under the federal statutes. Regulation of highway safety in interstate commerce is a  
 24 substantial federal interest expressed in the Motor Carrier Safety provisions of 49 U.S.C. section  
 25 31501 et seq., meriting a federal forum to amply and uniformly promote that interest.

26       8. Plaintiff and the Service Representatives, deliver some specially ordered garments,  
 27 mats and linen, specifically customized to the requirements of many of Defendant's customers,  
 28 where such deliveries constitute the last leg of a continuous interstate transit originating at an out-

1 of-state manufacturing facility. Such merchandise is ordered from the manufacturer, specifically  
2 for the customer and its individualized requirements, including uniforms with individual  
3 employees' names affixed and in the sizes of such individuals, and door mats with the customer's  
4 name or logo imprinted. (Teixeira Decl. ¶ 6.) Thus, such Service Representatives are engaged in  
5 interstate commerce and subject to federal regulation. See *Reich v. American Drivers Serv.*, 33  
6 F.3d 1153, 1155, n.3 (9th Cir. 1994). *Long Beach Banana Dist. v. Atchison T.&S.F.Ry. Co.*, 407  
7 F.2d 1173 (9th Cir. 1969).

8        Courts have found that “[u]nder the ‘well-pleaded complaint’ rule, the federal  
9 question, which invokes federal jurisdiction, must appear from the complaint and not from any  
10 federal defense [including preemption] the defendant might raise to defeat the claim.” *Bright v.*  
11 *Bechtel Petroleum, Inc.*, 780 F.2d 766, 769 (9th Cir. 1986) (citing *Franchise Tax Bd. v. Constr.*  
12 *Laborers Vacation Trust*, 463 U.S. 1, 10 (1983)). The federal question at issue here, whether  
13 Plaintiff is regulated by federal law, is not raised as a defense. Plaintiff has pleaded and must  
14 prove his days and hours of work are regulated by Wage Order 6-2001 which necessarily depends  
15 on whether drivers are subject to the Department of Transportation regulations because if they  
16 are, the provisions are inapplicable. Therefore, Plaintiff’s first cause of action requires resolution  
17 as an essential element of the claim of a significant and substantial federal question – whether  
18 Plaintiff is regulated as a driver by federal law rather than the state Wage Order. The first cause  
19 of action thus arises under federal law and this action may be removed to this Court by Defendant  
20 pursuant to the provisions of 28 U.S.C. section 1441. The Court has supplemental jurisdiction  
21 under 28 U.S.C. section 1367 over the remaining related causes of action brought under state law.

**THE COURT HAS DIVERSITY JURISDICTION OVER THIS ACTION**

UNDER 28 U.S.C. § 1332(a)

24       10. The Court has original jurisdiction over the Action under 28 U.S.C. section  
25 1332(a) because, the controversy is between real parties in interest who are citizens of different  
26 states (California for the named Plaintiff and Delaware and Illinois for Morgan Services), and the  
27 amount in controversy exceeds the sum of \$75,000 for the named Plaintiff, exclusive of interest  
28 and costs. The Action is one which may be removed to this Court by Defendant pursuant to 28

1 U.S.C. 1441, as Defendant is not a citizen of California, the State in which the Action was  
 2 brought. There would be less than 100 members of the putative class. (Teixeira Decl. ¶ 7.)

3 THE PARTIES HAVE DIVERSITY OF CITIZENSHIP

4 11. Complete diversity of citizenship exists between Plaintiff and Defendant because:

5 (a) As alleged in the Complaint, named Plaintiff William Swiman is a resident  
 6 and citizen of the State of California. (Complaint ¶¶ 9, 10.)

7 (b) Morgan Services is incorporated in Delaware. Morgan Services' corporate  
 8 headquarters are in Illinois and it conducts approximately 13% of its business in that state.  
 9 Morgan Services conducts the majority of its business, approximately 30%, in Ohio. (Teixeira  
 10 Decl. ¶ 3.) Morgan Services therefore is a citizen of Delaware and Illinois. 28 U.S.C. section  
 11 1332(c)(1) ("a corporation shall be deemed to be a citizen of any State by which it has been  
 12 incorporated and of the State where it has its principal place of business").

13 12. There are no other named parties identified in the Action, and the citizenship of the  
 14 unidentified "Does" must be disregarded for purposes of removal jurisdiction. 28 U.S.C. section  
 15 1441(a) ("the citizenship of defendants sued under fictitious names shall be disregarded").

16 THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000 FOR THE NAMED PLAINTIFF

17 13. Plaintiff fails to specify a damages sum. However, this Court may consider  
 18 whether it is "facially apparent" from the Complaint that the jurisdictional amount is in  
 19 controversy. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

20 14. Plaintiff's hourly wage was \$10.91 during the eighteen (18) weeks in which he  
 21 worked for Morgan Services. (Teixeira Decl. ¶ 7.) The Complaint alleges claims for missed  
 22 meal and break periods, for which a penalty in the amount of one hour's pay is assessed for each  
 23 missed meal and each missed break for each day worked in the eighteen (18) weeks Plaintiff  
 24 worked for Morgan Services, which could reach \$1,963.80. (Declaration of Arlene Prater  
 25 ("Prater Decl.") ¶ 4A.) The Complaint also seeks unpaid overtime wages calculated at the  
 26 overtime rate (one and a half times the hourly rate) for an estimated twenty (20) hours per week  
 27 for eighteen (18) weeks for a total of \$5,893.20, as well as ten (10) hours of unpaid overtime at  
 28 double-time, for hours worked in excess of twelve (12) hours per shift for a total of \$3,927.60

1 (Prater Decl. ¶¶ 4C, D). Moreover, claims for waiting time penalties, which is a full day's pay for  
 2 each day wages were due but were not paid, could be up to a maximum of thirty (30) days which  
 3 totals \$2,618.40, using an eight-hour (8) work day. (Prater Decl. ¶ 4E). Additionally, Plaintiff  
 4 seeks a penalty for eighteen (18) weeks of failing to provide wage statements with hours worked  
 5 (\$50 first week and \$100 for each subsequent pay period), which would total \$1,750.00 in  
 6 damages. (Prater Decl. ¶ 4B). The potential total for Plaintiff's alleged Wage Order and Labor  
 7 Code violations therefore totals \$16,153.00.

8       15. Plaintiff also seeks restitution for a Business and Professions Code violation for  
 9 unlawful and unfair business practices under Section 17200 et seq. The estimated restitution for  
 10 such a claim is \$16,153.00 based on the totals for claims for unpaid wages, missed meals and  
 11 breaks and penalties as set forth above. (Prater Decl. ¶ 4F.)

12       16. Attorneys' fees for this Action will cause the named Plaintiff's amount in  
 13 controversy to exceed the \$75,000 amount in controversy requirement. The putative class cannot  
 14 satisfy the certification requirements of Federal Rules of Civil Procedure, Rule 23(b)(3),  
 15 providing that a class be certified only where questions of law or fact common to members of the  
 16 class predominate and a class action is superior to other available methods for fairly and  
 17 efficiently adjudicating the case. Therefore, all potential attorneys' fees in this Action may  
 18 properly be assessed to the named Plaintiff as only his individual claim will survive.

19       17. The putative class of Morgan Services Service Representatives is not proper for  
 20 certification based on *Brown v. Federal Express Corp.*, 2008 WL 906517 (C.D. 2008) where a  
 21 putative class of delivery drivers sought certification of their class claims for missed meal and  
 22 break periods under California law. The court held that "Plaintiffs may prevail only if they  
 23 demonstrate that FedEx's policies deprived them of those breaks. Any such showing will require  
 24 substantial individualized fact finding." *Id.* at \*6. The court further determined that the drivers'  
 25 duties varied significantly, and that the ability to take breaks and meal periods were affected by  
 26 the differences in job duties. These job duty differences included the number of stops made by  
 27 different types of drivers, which varied between one hundred (100) and twelve (12) stops per day,  
 28 and well as the distances traveled by each driver, the different ebbs and flows in drivers' work

1 days as well as differences in delivery deadline times. Based on these factual differences, the  
 2 court stated:

3 "Plaintiffs propose no method of common proof that would  
 4 establish that FedEx's policies prevent drivers from taking required  
 5 breaks, regardless of their individual circumstances. Although  
 6 Plaintiffs assert in the Complaint that FedEx's policies put such  
 7 pressure on drivers that they cannot take required breaks, they  
 propose no means of proving this claim on a class-wide basis. The  
 Court thus concludes that the highly individualized factual inquiries  
 just described predominate over the few legal and factual issues  
 shared by the proposed class." *Id.* at 7.

8 The fact that individual issues of fact predominated the case, also led the court to conclude that  
 9 the class action was not the superior method of adjudication, as required by Rule 23(b)(3) because  
 10 the individual issues of fact render the class action unmanageable. *Id.* at \*8. Therefore, class  
 11 certification was denied.

12       18. As in *Brown*, the putative class of Morgan Services drivers is not proper for  
 13 certification. The job duties and schedules vary to the extent that individual questions of fact will  
 14 predominate over their class claims. Morgan Services drivers make anywhere from four (4) to  
 15 twenty-five (25) stops per shift, and drove anywhere between fifteen (15) miles to two hundred  
 16 (200) miles during a shift. (Teixeira Decl. ¶¶ 9A, B.) The distances between each delivery can  
 17 also vary between the stops being directly next door to each other or to being more than ten (10)  
 18 miles apart. The hours in which they worked varied as their start times ranged from 3:00 a.m. to  
 19 8:30 a.m. (Teixeira Decl. ¶¶ 9C, D.) The time deadline differences between drivers vary as it  
 20 depends on the needs of the customers, and the time sensitivity of deliveries can also vary from  
 21 day to day for each individual driver. (Teixeira Decl. ¶ 9E.) Moreover, the number of times the  
 22 drivers must return to the home location to pick up additional product or drop off a load of soiled  
 23 products vary between each driver as well as for each individual driver on a daily basis based on  
 24 the needs of the customers. (Teixeira Decl. ¶ 9F.) The volume of product and the number of  
 25 stops made by each driver may vary on a daily basis due to variance in the customer demand, and  
 26 unexpected additional deliveries may be necessary during any given shift. (Teixeira Decl. ¶ 9G.)  
 27 It is these individualized facts that a Service Representative would use to claim that they were  
 28 precluded by Defendant's policies from taking meal and break periods. Additionally, the putative

1 class claims they worked overtime for which they were not compensated. This would also  
2 necessarily involve significant individualized factual issues which would predominate. The Court  
3 would in essence be required to conduct mini-trials for each Plaintiff, which the Court recognized  
4 in *Brown* made it inappropriate for class certification. There is no way to make these  
5 determinations on a class-wide basis as held by the court in *Brown*. Therefore, the class will not  
6 be certified.

7 19. Because the class is not certifiable, the attorneys' fees for Plaintiff to pursue his  
8 individual claims would exceed \$75,000. (Prater Decl. ¶6.) The attorneys' fees combined with  
9 the estimated damages for Plaintiff's Wage Order and Labor Code alleged violations and  
10 restitution for the Business and Professions Code alleged violation cause the amount in  
11 controversy to exceed the \$75,000 requirement.

12 **MORGAN SERVICES HAS COMPLIED WITH THE REQUIREMENTS FOR REMOVAL**

13 20. Morgan Services has filed this Notice of Removal within thirty (30) days of April  
14 2, 2008, the effective date of service of the initial pleading in the Action. *See* 28 U.S.C.  
15 § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 348 (1999) (30-day removal  
16 period runs from formal service of summons and complaint).

17 21. Morgan Services has given written notice of the filing of this Notice of Removal to  
18 the parties and has filed a copy of the Notice and supporting papers with the Clerk of the San  
19 Diego County Superior Court, as required by 28 U.S.C. section 1446(d).

20 22. Morgan Services has properly removed the Action to this Court under 28 U.S.C.  
21 section 1441, because the United States District Court for the Southern District of California  
22 embraces the place where the Action was pending.

23 23. Morgan Services reserves, and does not waive, any objection it may have to  
24 service, jurisdiction, or venue, and any and all other defenses or objections to the Action.

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1                   CONCLUSION

2       24. WHEREFORE, further proceedings in the Action should be discontinued, and the  
3 Action should be removed to the United States District Court for the Southern District of  
4 California.

5 Dated: May 2, 2008

6                   BEST BEST & KRIEGER LLP

7 By:

8                   ARLENE PRATER  
9                   ALISON D. ALPERT  
10                  Attorneys for Defendant  
11                  MORGAN SERVICES, INC.

BEST BEST & KRIEGER LLP  
ATTORNEYS AT LAW  
SAN DIEGO

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

WILLIAM SWIMAN, individually and on behalf of all other persons similarly situated and on behalf of the general public,

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address and Telephone Number)

Jason E. Baker, Esq., SBN 197666  
Brent Jex, Esq., SBN 235251  
Keegan & Baker, LLP  
4370 La Jolla Village Drive, Suite 640  
San Diego, CA 92122  
Telephone: (858) 552-6750; Facsimile: (858) 552-6749

**DEFENDANTS**

MORGAN SERVICES, INC., an Illinois corporation; and DOES 1 through 100, inclusive

**FILED**

County of Residence of First Listed Defendant  
**08 MAY -2 PM 12: 43**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Arlene Prater, Esq., SBN 6109  
Alison D. Alpert, Esq., SBN 199257  
Best Best & Krieger LLP  
655 West Broadway, 15th Floor  
San Diego, CA 92101  
Telephone: (619) 525-1300; Facsimile: (619) 233-6118

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF DEF	PTF DEF
Citizen of This State	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State
Citizen of Another State	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	Foreign Nation

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R. R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<b>LABOR</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 371 Truth in Lending	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 871 IRS -Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<b>HABEAS CORPUS:</b>		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 530 General		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. § 1441

Brief description of cause:

Action for unpaid overtime, missed meal and rest periods and other wage and hour claims.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S)** (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

May 2, 2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 150751

AMOUNT \$350 -

DD 05/02/08

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 150454 - MB

May 02. 2008  
12:48:31

Civ Fil Non-Pris  
USAQ #: 08CV0806 CIVIL FILING  
Judge.: WILLIAM Q HAYES  
Amount.: \$350.00 CK  
Check#: BC68662

Total-> \$350.00

FROM: WILLIAM SWIMAN VS  
MORGAN SERVICES, ET AL